

## McMahan, Tim

---

**From:** Greg Wendt <Greg.Wendt@co.benton.wa.us>  
**Sent:** Monday, January 11, 2021 3:19 PM  
**To:** McMahan, Tim  
**Cc:** Ryan Brown; Jerrod MacPherson; Dave Kobus; Darin Huseby; Pat Landess  
**Subject:** FW: [EXTERNAL] Horse Heaven - DRAFT Land Use Compliance

**Follow Up Flag:** Follow up SCE  
**Flag Status:** Flagged Email Correspondence [January 8-11, 2021]  
EXH-1057\_X

Tim,

Thank you for your recent update on the Horse Heaven Wind Project (January 13, 2021).

I have reviewed the land use summary document you submitted to Benton County on Friday, January 8, 2021. We appreciate the opportunity to review and provide comment.

The Planning Department's general comments are as follows:

1. The document makes reference, on Page 17, to a "Zoning Determination and Interpretation letter from Benton County to the Applicant reviews the applicability of these definitions, including as Attachment XX-County Zoning Determination" that is contemplated to be an attachment. When do you expect to share a draft of that document with the County? Or is that something you assume the County will be preparing? And has that planned changed as a result of our discussion this morning where we described that the County can only determine if a CUP would be issued, i.e. is the project is allowed under our zoning, after a public hearing to allow potential opponents an opportunity to present evidence as to why they believe a CUP would not be legally issued? This issue is further discussed below.
2. Suggestion: Add an analysis on how the project impacts or complies with BCC 6A.15 (Noise) and BCC 3.18 (Roads). This information may be addressed in SEPA checklist, but it may be beneficial to include in the land use review documents.
3. I tried to review the citations throughout the document for accuracy. They generally look pretty accurate, but it was a quick review. I did notice an erroneous citation in the table to BCC 11.17.0170, which is not an accurate code citation.
4. Please note that activities which are deemed to be "allowable uses" in Title 11 Zoning (BCC 11.17.040) do require review and approval under Title 15 Environment and other applicable codes.
5. Please note the following definitions in BCC 11.03.010 (Zoning)

(53) "Compatibility" means the congruent arrangement of land uses and/or project elements to avoid, mitigate, or minimize (to the greatest extent reasonable) conflicts.

(57) "Conditional Use Permit" means a permit which is granted for a conditional use. The term "conditional use" means a use subject to specified conditions which may be permitted in one (1) or more classifications as defined by this title but which use, because of characteristics peculiar to it, or because of size, technological processes or type of equipment, or because of the exact location with reference to surroundings, streets and existing improvements or demands upon public facilities, or impacts to ground or surface water requires a special

degree of control to make such uses consistent with and compatible to other existing or permissible uses in the same zone or zones, and to assure that such use shall not be adverse to the public interest.

6. Please note the Benton County Comprehensive Plan seeks to preserve the natural environment, local customs, culture, and quality of life for County residents. Simultaneously, it seeks to facilitate and encourage economically productive use of the land and resources base to enable economic growth, prosperity, and enjoyment of a quality life. The goals, policies and elements of the Plan provide the foundation for land use requirements and decision making in the County.

As we have discussed, to obtain zoning compliance in Benton County the proposed use requires the approval of a conditional use permit and in turn evidence is to be presented to the Hearing Examiner that allows for the positive affirmation of the required Findings of Fact. Benton County is unable to conclude if your client's project is consistent with our zoning, i.e. entitled to a CUP, until the completion of the public meeting and public hearing process that would allow us to receive evidence from anyone in opposition to the issuance of a CUP. The County Code is very specific in BCC 11.50.050 (b) that an open record hearing be held and in BCC 11.50.050 (c) that following the conclusion of the open record hearing the Hearing Examiner shall make a decision. The Code states the use shall be granted only if the findings of fact can be affirmed and made based upon the evidence presented during the process. As we discussed this morning, for these reasons we fail to see how the County could provide a certification before the EFSEC hearing as to the County's conclusion as to whether or not a CUP would be appropriately issued for this project. We understand that, as Dave pointed out, your filing with EFSEC will preclude our Hearings Examiner from holding the hearing otherwise required by County code. However, that does not mean that she or the County is required to or should pre-judge the application and issue a certification without allowing third parties an opportunity to be heard. This just does not seem to be a situation where a Certificate of Consistency can be issued at this point in time.

Once again, we appreciate your time earlier today and look forward to reviewing the SEPA materials associated with the Project. If you have any questions on the above comments, please let us know.

Sincerely,  
Greg



Greg Wendt  
Director of Community Development  
Benton County Public Services Building  
102206 E Wiser Parkway  
Kennewick, WA 99336  
(509) 786-5612

Mailing Address:

Benton County Community Development Department  
PO Box 910, Prosser, WA 99350

**From:** Ryan Brown <[Ryan.Brown@co.benton.wa.us](mailto:Ryan.Brown@co.benton.wa.us)>

**Sent:** Monday, January 11, 2021 10:48 AM

**To:** McMahan, Tim <[tim.mcmahan@stoel.com](mailto:tim.mcmahan@stoel.com)>

**Cc:** Darin Huseby <[Darin@scoutcleanenergy.com](mailto:Darin@scoutcleanenergy.com)>; Dave Kobus <[Dave@scoutcleanenergy.com](mailto:Dave@scoutcleanenergy.com)>; Jerrod MacPherson <[Jerrod.MacPherson@co.benton.wa.us](mailto:Jerrod.MacPherson@co.benton.wa.us)>; Greg Wendt <[Greg.Wendt@co.benton.wa.us](mailto:Greg.Wendt@co.benton.wa.us)>

**Subject:** RE: [EXTERNAL] Horse Heaven - DRAFT Land Use Compliance

Tim,

Thanks for the update this morning. Our Planning Director will take a look at your draft report on land use issues and let you know his thoughts.

# Ryan K. Brown

Chief Deputy Pros. Attorney, Civil  
Benton Co. Pros. Attorney's Office  
Phone: (509) 735-3591

This email, any and all attachments hereto, and all information contained and conveyed herein may contain and be deemed confidential attorney client privileged and/or work product information. If you have received this email in error, please delete and destroy all electronic, hard copy and any other form immediately. It is illegal to intentionally intercept, endeavor to intercept or procure any other person to intercept or endeavor to intercept, any wire, oral or electronic communication.

**From:** McMahan, Tim <[tim.mcmahan@stoel.com](mailto:tim.mcmahan@stoel.com)>

**Sent:** Friday, January 8, 2021 2:10 PM

**To:** Ryan Brown <[Ryan.Brown@co.benton.wa.us](mailto:Ryan.Brown@co.benton.wa.us)>; Dave Kobus <[Dave@scoutcleanenergy.com](mailto:Dave@scoutcleanenergy.com)>; Greg Wendt <[Greg.Wendt@co.benton.wa.us](mailto:Greg.Wendt@co.benton.wa.us)>; Jerrod MacPherson <[Jerrod.MacPherson@co.benton.wa.us](mailto:Jerrod.MacPherson@co.benton.wa.us)>

**Cc:** McMahan, Tim <[tim.mcmahan@stoel.com](mailto:tim.mcmahan@stoel.com)>; Darin Huseby <[Darin@scoutcleanenergy.com](mailto:Darin@scoutcleanenergy.com)>

**Subject:** [EXTERNAL] Horse Heaven - DRAFT Land Use Compliance

**CAUTION:** This email originated from outside of Benton County. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi guys: In preparation for our Monday call/"meeting," attached is our draft land use section for the Application for Site Certification to be filed with EFSEC. We would greatly appreciate any input you can provide. For our call, Dave and I anticipate providing status updates and discussing what we anticipate the process to be once we file with EFSEC.

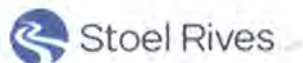
Thank you all for your time. We look forward to our discussion on Monday at 10:00 AM. Have a great weekend. TLM

**Timothy L. McMahan | Partner**

**STOEL RIVES LLP | 760 SW Ninth Avenue, Suite 3000 | Portland, OR 97205**

Direct: (503) 294-9517 | Mobile: (503) 504-8693 | Fax: (503) 220-2480

[tim.mcmahan@stoel.com](mailto:tim.mcmahan@stoel.com) | [www.stoel.com](http://www.stoel.com) | [Bio](#) | [vCard](#) | [LinkedIn](#) [11 Offices in 7 States](#)



This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any unauthorized review, use, or distribution is prohibited and may be unlawful.